

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

SHELBY ROE,

Plaintiff,

vs.

HARCO NATIONAL INSURANCE
COMPANY,

Defendant.

Case No. 15-CV-558-JHP-TLW

OPINION AND ORDER

Defendant's Motion for Independent Medical Examination, [Dkt. 59], has been referred to the undersigned United States Magistrate Judge for decision. [Dkt. 63]. The matter has been fully briefed, [Dkt. 59, 67, 68], and a hearing on the matter was held. Pursuant to Fed.R.Civ.P. Rule 35, Defendant seeks an order of the court directing Plaintiff to submit to an independent medical examination by board certified orthopaedic surgeon Thomas G. Cravens, M.D. on September 13, 2017, beginning at 10 a.m.

Plaintiff was injured in a automobile accident. The car she was riding in was covered by an underinsured motorist (UIM) policy. Plaintiff has sued the Defendant insurer alleging breach of contract and that the Defendant violate the duty of good faith and fair dealing in handling her UIM claim. Even though Plaintiff has filed a stipulation of dismissal of her breach of contract claim, the extent of her injuries remains relevant to her damages on her bad faith claim.

The court finds that the physical condition of Plaintiff is in controversy and that good cause exists for the requested examination as Plaintiff is seeking damages for her injuries which she claims were sustained in the accident and is scheduled to have surgery on September 26, 2017. The court further finds that in view of the impending surgery and the

holdings in cases decided in this District,¹ there is no basis for granting Plaintiff's request for a stay of this order to enable her to seek review of this order.

Defendant's Motion for Independent Medical Examination, [Dkt. 59], is GRANTED.

Plaintiff is HEREBY ORDERED to appear and submit to an independent medical examination to be performed by Dr. Thomas G. Craven, 6585 South Yale Avenue, Suite 200, Tulsa, Ok, on Wednesday September 13, 2017, beginning at 10:00 a.m. The examination shall consist of a standard orthopedic workup, including plain film x-rays. The examination will focus on the neck and spine as related to Plaintiff's claims for past, present, and future medical and suffering, and will include taking a history of Plaintiff's past medical history. Plaintiff is hereby ORDERED to bring with her to the appointment all copies of prior diagnostic films.

SO ORDERED this 6th day of September, 2017.


FRANK H. MCCARTHY
UNITED STATES MAGISTRATE JUDGE

¹ *Morrisson v. Chartis Property Casualty Co.*, 2014 WL 1323196 (N.D. Okla)(granting Rule 35 motion for independent medical examination in bad faith case), *affirmed* 2014 WL 1323743; *Weddle v. Farmers Ins. Co.*, 2011 WL 5439200 (N.D. Okla.)(reversing Magistrate Judge's order denying independent medical examination in bad faith case and ordering plaintiff to submit to examination).